

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA**

<b>VFS LEASING CO.,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
	)	<b>CIVIL ACTION NO.: 3:06CV638-SRW</b>
<b>VS.</b>	)	
	)	
<b>G. F. KELLY, INC d/b/a KELLY</b>	)	
<b>TRUCKING; and GUY KELLY,</b>	)	
	)	
<b>DEFENDANTS.</b>	)	

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**RESPONSE TO MOTION TO STRIKE**

Come now the Defendants G. F. Kelly, Inc. d/b/a Kelly Trucking and Guy Kelly and respond to the Motion to Strike filed by Plaintiff by showing the following:

1. The affidavits of Guy Kelly and Charles Lance show on their face that the affiants are qualified to give the opinions contained therein. Any evidence presented in the Motion to Strike goes to the weight of the testimony and not the admissibility.
2. The Declarations contain testimony that comments on testimony and qualifications of other witnesses. Such testimony is inadmissible and should be stricken.
3. The Declarations filed are inadmissible because they contain testimony that was not timely disclosed.
4. There are questions of fact at issue that require a trial. The court will have to determine at trial admissibility of expert testimony, among other things.
5. Plaintiff has the burden of proving the amount of actual damages sustained. There are questions of fact at issue that can only be determined by a trial.
6. The affidavits are admissible as expert testimony. The offered proof only goes to the weight of the evidence.

/s/ James H. Starnes  
James H. Starnes  
Attorney for Defendants

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have the foregoing pleading electronically using the CM/ECF system which will electronically serve a copy of same on all counsel of record on this the 7th day of May, 2007 as follows:

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/s/ James H. Starnes

OF COUNSEL